

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
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ENRON CORP., *et al.*, : Case No. 01-16034 (AJG)  
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Reorganized Debtors. : Jointly Administered  
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-----X  
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ENRON CORP.; ENRON NORTH AMERICA : Adversary Proceeding  
CORP.; ENRON NATURAL GAS MARKETING : No. 03-09266 (AJG)  
CORP.; ENRON BROADBAND SERVICES, INC.; :  
ENRON ENERGY SERVICES, INC.; :  
ENRON DEVELOPMENT FUNDING, INC., :  
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Plaintiffs, :  
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v. :  
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CITIGROUP, INC., *et al.*, :  
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Defendants. :  
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-----X

**ORDER DENYING MOTION BY THE AD HOC  
COMMITTEE OF YOSEMITE/CLN NOTEHOLDERS  
FOR AN ORDER PERMITTING ITS INTERVENTION**

**WHEREAS**, by motion dated January 20, 2004 (the “Motion”), the so-called “Ad Hoc Committee of Yosemite/CLN Noteholders” moved this Court for entry of an order, pursuant to Rule 7024 of the Federal Rules of Bankruptcy Procedure, Rule 24 of the Federal Rules of Civil Procedure, and section 1109(b) of title 11, United States Code, permitting it to intervene in the above-captioned adversary proceeding; and

**WHEREAS**, Enron Corp. and its affiliated reorganized debtors, plaintiffs in this adversary proceeding (the “Plaintiffs”), opposed the Motion; and

**WHEREAS**, this Court, from the bench, orally issued certain findings of fact and conclusions of law with respect to the Motion on October 26, 2004 and December 9, 2004 (collectively, the “Ruling”), a copy of the October 26, 2004 transcript (Exhibit A) and a copy of the December 9, 2004 transcript, as corrected and modified by the Court (Exhibit B) are attached hereto.

**NOW, THEREFORE, IT IS ORDERED AND ADJUDGED THAT:**

1. For the reasons set forth in the Ruling, the Motion is hereby denied in all respects.

DATED: New York, New York  
December 23, 2004

s/ Arthur J. Gonzalez  
ARTHUR J. GONZALEZ  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT A

# Document Excerpted to Reduce Bulk

# EXHIBIT B

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
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In re  
Case No.  
ENRON CORP., et al, 01-16034  
(03-9266)  
Debtors.  
-----x  
ENRON CORP. and ENRON NORTH  
AMERICA CORP.,  
Plaintiffs, Adv. No.  
-against- (03-9266)  
CITIGROUP INC., et al,  
Defendant.  
-----x  
December 9, 2004  
3:10 p.m.  
United States Custom House  
One Bowling Green  
New York, New York 10004  
E X C E R P T  
3:00 (03-9266) Enron Corp. and Enron  
North America Corp. v. Citigroup Inc.,  
et al:  
DECISION TO BE RENDERED  
Motion filed by the Ad Hoc Committee of  
Yosemite/CLN Noteholders for an order  
permitting intervention in adversary  
proceeding.  
B E F O R E:  
THE HONORABLE ARTHUR J. GONZALEZ  
United States Bankruptcy Judge

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1 Proceedings

2 JUDGE GONZALEZ: Please be  
3 seated.

4 Before I begin I just want to  
5 note that I will review the transcript of  
6 the decision that I am going to read into  
7 the record before it is disseminated to  
8 the parties. I may make certain  
9 corrections and modifications thereto.

10 D E C I S I O N

11 At the outset, the Court notes  
12 that at a prior hearing regarding the  
13 motion before it, the Court stated that  
14 the Indenture Trustee filed papers in  
15 support of intervention by the Movants.  
16 Thereafter, the Court reviewed the docket  
17 and the transcript of prior hearings  
18 regarding the intervention motion and did  
19 not find that the Indenture Trustee had  
20 taken such position, either written or  
21 oral, regarding the two motions to  
22 intervene by the CLN Noteholders -- one  
23 of which has since been withdrawn.

24 As to the Movants' request for  
25 intervention based upon their CLN



1                               Proceedings

2     noteholdings, the Court has previously  
3     ruled that the Movants have failed to  
4     establish that, as a "creditor of a  
5     creditor" -- the creditor being any of  
6     the Trusts -- that they qualified under  
7     Rule 24(a)(1) as a party in interest  
8     under Section 1109; or that they lack  
9     adequate representation under Rule 24  
10    (a)(2). Following that ruling, the Court  
11    sought further briefing regarding the  
12    impact of the language of Rule 24(b)(2).  
13    Specifically, Court directed the parties  
14    to brief whether the language of Rule  
15    24(b)(2) required that the claim or  
16    defense to be asserted must be that of  
17    the applicant [and here the applicant has  
18    been identified by the Court as the  
19    "Movants"].

20                           The parties filed their  
21    submissions and the Court will now  
22    proceed to rule on the 24(b)(2)  
23    permissive intervention and 1109  
24    intervention based upon Movants' claim  
25    that, in addition to their CLN

1                               Proceedings

2     noteholdings against the Trusts, that  
3     they are direct creditors of Enron.  
4     Under Rule 24(b)(2)

5                               The relevant portion, I will  
6     read, "when an applicant's claim or  
7     defense and the main action have a  
8     question of law or fact in common," and  
9     then it proceeds to say. "In exercising  
10    its discretion (under the section), the  
11    court shall consider whether the  
12    intervention will unduly delay or  
13    prejudice the adjudication of the rights  
14    of the original parties."

15                            The Movants in the main action  
16    brought against the various CLN trusts do  
17    not have a question of law or fact in  
18    common. Movants' asserted-claims or  
19    defenses are the same as those of the  
20    various Trusts and are derivative  
21    therefrom.

22                            As stated above, the issue the  
23    Court directed the parties to focus on  
24    was whether, in essence, permissive  
25    intervention would be appropriate with

1 Proceedings

2 respect to a derivative claim or defense.

3 As a general matter, it appears  
4 to the Court that the derivative-type  
5 intervention is more appropriately  
6 addressed under 24 (a)(2) Intervention of  
7 Right. In the standard under that  
8 section has previously discussed by the  
9 Court in a prior ruling. That standard  
10 includes that the applicant has an  
11 interest relating to the property or  
12 transaction which is the subject of the  
13 action and that the interest will be  
14 impacted as a practice matter -- unless  
15 its interest is adequately represented.

16 In spite of Movants' arguments  
17 that they are not adequately represented  
18 by the Indenture Trustee, the Court found  
19 that there is nothing in the record that  
20 supports that contention. Nearly a year  
21 ago, and periodically thereafter, this  
22 Court has asked the Movants, including  
23 the now withdrawn Movants, why -- in  
24 spite of the general allegations  
25 regarding Citibank's and Enron's role in

1                               Proceedings

2     the creation and establishment of the  
3     purpose of the Trusts -- no action has  
4     ever been taken to set aside or otherwise  
5     void the Trust structure to permit the  
6     Noteholders to assert their claims and  
7     defenses directly, in light of the  
8     Movants' contention of a lack of adequate  
9     representation.

10                       No explanation has ever been  
11     provided. This Court is not of the view  
12     that one must seek to void the Trust,  
13     etc., in order to establish an inadequacy  
14     of representation, but it is a factor  
15     that this Court considers when there is,  
16     as stated above, no support for the  
17     proposition that the CLN Noteholders,  
18     including Movants, are not adequately  
19     represented and their interest is not  
20     being protected by the Indenture Trustee.

21                       Further, Movants assert -- and  
22     this Court does not question -- that the  
23     Noteholders are secured by Trust claims.  
24     Yet, again, as previously raised by the  
25     Court, no action has ever been taken to

1                               Proceedings

2       foreclose on such collateral and no  
3       explanation has ever been provided.

4                               In sum, when one complains  
5       about the inadequacy of representation  
6       but has a legal mechanism to address the  
7       issue of such representation -- in that a  
8       direct interest could be asserted, yet  
9       the aggrieved party has chosen not to  
10      avail itself of that option -- absent an  
11      explanation, the broad, unsupported  
12      allegation of inadequacy of  
13      representation is unavailable.

14                            The Court does not question the  
15      Movants' legal strategy, whatever it may  
16      be, in not seeking to void the Trust or  
17      foreclose on the collateral, but when  
18      sophisticated, well-represented parties  
19      seek not to pursue a certain course of  
20      action that would appear to be a remedy  
21      for the concerns raised regarding the  
22      adequacy of representation, and such  
23      parties provide no explanation as to why  
24      such action is not taken, the assertions  
25      of lack of adequate representation ring

1                               Proceedings

2     hollow.

3                               Returning to the issue under  
4     24(b)(2), even if a derivative claim or  
5     defense could support permissive  
6     intervention, it would appear, under the  
7     facts of the instant case, that it would  
8     have to be premised upon a concern over  
9     representation. If such were  
10    established, the Court would then  
11    exercise its discretion -- as set forth  
12    below.

13                            Under Rule 24(b)(2), the Court  
14    is directed to consider whether  
15    intervention will unduly delay or  
16    prejudice the adjudication of the rights  
17    of the original parties.

18                            There were two points made by  
19    the Movants at the October 26, 2004  
20    hearing that warrant comment here. Each  
21    point generally deals with the adequacy  
22    of representation issue and specifically  
23    premised upon concerns raised by the  
24    Movants as to the direction the Trust  
25    litigation may now take. There were two

1 Proceedings

2 points made by Movants at the October 26,  
3 2004 hearing that warrant comment here.  
4 Each point generally deals with the  
5 adequacy of representation issue and  
6 specifically is premised upon concerns  
7 raised by the Movants as to the direction  
8 the Trust litigation may now take.

9 The noteholders that control  
10 each of the Trusts, including the trust  
11 in which the Movants have an interest  
12 (the "Yosemite Trust"), were purchasers  
13 in the secondary market and this  
14 controlling group's attorney is now  
15 representing the Indenture Trustee for  
16 each of the Trusts, including the  
17 Yosemite Trust, in litigation.

18 The first point deals with the  
19 allegation that, in the Movants' view,  
20 the Trust in which they have an interest  
21 has better defenses to the "equitable  
22 subordination" claim asserted than do the  
23 other Trusts and that somehow the fact  
24 that the litigation may be controlled by  
25 the secondary market purchasers would

1 Proceedings

2 negatively impact the litigation of that  
3 issue.

4 Here, there is no reason to  
5 belief that, as a litigation matter, each  
6 of the Trusts will not argue their  
7 respective positions considering each  
8 Trust's particular set of facts.

9 Therefore, the fact that the controlling  
10 group of holders may not be original  
11 holders seems to be irrelevant regarding  
12 the legal arguments that may be raised  
13 with respect to each Trust because it is  
14 in their economic interest to prevail in  
15 each of the Trust litigations.

16 The second point is that the  
17 controlling group's different economic  
18 interest would impact the settlement  
19 negotiation dynamic to be to the  
20 detriment of the Movants.

21 Each party, whether original  
22 holders or purchasers in a secondary  
23 market, may well have different economic  
24 considerations regarding an acceptable  
25 settlement based upon their own economic



1 Proceedings

2 position and litigation posture, etc. In  
3 any event, the trust governance structure  
4 for each of the Trusts will dictate, if  
5 such, of course, is not voided, the  
6 settlement acceptance process. It will  
7 be controlled, as referenced above, by  
8 the Trust governance under each of the  
9 indentures.

10 To permit an adequately  
11 represented "creditor of a creditor" to  
12 intervene to raise the specter of trust  
13 governance in the context of settlement  
14 strategies would clearly unduly delay and  
15 prejudice the adjudication of the rights  
16 of the original parties.

17 Therefore, even if holders of  
18 derivative "claims or defenses" are  
19 entitled to intervene under 24(b)(2),  
20 this Court finds that the Movants are  
21 adequately represented and having  
22 considered all of the aforementioned, the  
23 Court finds that Movants' intervention  
24 would unduly delay and prejudice the  
25 rights of the original parties.

1 Proceedings

2 Therefore, intervention under  
3 24(b)(2) is denied.

4 With respect to Section 1109 considera-  
5 tion, Movants have stated that they have  
6 1109 party-in-interest standing by their  
7 direct claims against Enron and "Yosemite  
8 Notes as economic entities." As such,  
9 they maintain that they are legitimately  
10 affected by the outcome of the Adversary  
11 Proceeding.

12 Because this Court found that  
13 Vanguard's CLN note holdings do not  
14 entitle them to intervene, they seek to  
15 intervene by an unrelated direct claim so  
16 that they can assert what they otherwise  
17 are not qualified to assert under Rule  
18 24.

19 In other words, Vanguard  
20 asserts that it can intervene based upon  
21 a direct claim against Enron, unrelated  
22 to the Yosemite Trust. However, these  
23 economic interests conflict in that if  
24 Enron were to prevail against the Trusts,  
25 the economic interest of Movants' direct

1 Proceedings

2 claims would be enhanced. This  
3 highlights the absurd nature of the  
4 position taken by the Movants. To the  
5 extent it argues that their direct claims  
6 warrant intervention to assert their  
7 Yosemite Noteholders' economic interest.

8 There is no question that as a  
9 creditor of Enron, Movants have a right  
10 to be heard under 1109. However, as  
11 stated previously, they do not qualify as  
12 a party in interest as a "creditor of a  
13 creditor" under the circumstances  
14 presented with respect to the Yosemite  
15 noteholdings.

16 Under their direct claim they  
17 still must comply with Rule 24(c). Here,  
18 the pleading that was filed is a notice  
19 of motion to dismiss the claims against  
20 the Trust -- there is a sufficient  
21 "disconnect between the 1109 right to be  
22 heard as a creditor of Enron" and a  
23 notice of motion to dismiss an action  
24 commenced against another creditor of  
25 Enron entities [here the Trust] to find

1 Proceedings

2 that the 24(c) rule has not been  
3 satisfied by such pleading, even assuming  
4 that a motion to dismiss could otherwise  
5 qualify under a liberal reading of Rule  
6 24(c) pleading requirements.

7 In footnote 5 of Movants'  
8 Supplemental Memorandum they state "...  
9 that the Vanguard Funds seek only ..." --  
10 and the word "only" is underlined -- "to  
11 intervene regarding issues related to  
12 their recovery as Yosemite Noteholders.  
13 Such actions by Vanguard may well be  
14 consistent with its economic entity  
15 interest, but an intervenor's rights to  
16 be heard must bear some relationship to  
17 its party-in-interest status which would  
18 be established by the 24(c) pleading.

19 Therefore, based upon the  
20 foregoing the Movants' motion is denied  
21 in all respects, including any  
22 intervention under 1109 as to their  
23 direct claims, because they have failed  
24 to file an appropriate pleading under  
25 Rule 24(c) regarding their party-in-

1                               Proceedings

2       interest status.

3                               The Debtors are to settle an  
4       order consistent with this Court's  
5       ruling.

6                               \* \* \* \*

7                               As stated previously, the Court  
8       will review the transcript and likely  
9       make certain corrections and  
10      modifications before the order is then  
11      signed.

12                              Thank you.

13                              (Time noted:   3:27 p.m.)

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## C E R T I F I C A T E

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STATE OF NEW YORK )

: SS:

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COUNTY OF NEW YORK )

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I, DEBORAH HUNTSMAN, a Shorthand

6

Reporter and Notary Public within and for

7

the State of New York, do hereby certify:

8

That the within is a true and

9

accurate transcript of the proceedings

10

taken on the 9th day of December, 2004.

11

I further certify that I am not

12

related by blood or marriage to any of

13

the parties and that I am not interested

14

in the outcome of this matter.

15

IN WITNESS WHEREOF, I have

16

hereunto set my hand this 13th day of

17

December, 2004.

18

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DEBORAH HUNTSMAN

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